

Frank J. Rubino
Corporation Counsel for the City of Yonkers
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City Hall, Room 300
Yonkers, New York 10701
914-377-6256
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JESSE O'BRIEN,

Plaintiff,

-against-

AMENDED ANSWER

THE CITY OF YONKERS, DET. ANTHONY
CHIARELLA, Shield No. 601, Individually and in his
Official Capacity, SGT. KEVIN SKULLY, Individually
and in his Official Capacity, DET. "JOHN" MCCABE,
Shield No. 663, Individually and in his Official Capacity,
and P.O.'s "JOHN DOE" # 1-10, Individually and in their
Official Capacities, (the name John Doe being fictitious as
the true names are presently unknown),

07 Civ. 3974 (LMS)

Defendants.

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Defendants, THE CITY OF YONKERS, DET. ANTHONY CHIARELLA, SGT.
KEVIN SKULLY, and DET. "JOHN" MCCABE by their attorney, Frank J. Rubino,
Corporation Counsel of the City of Yonkers, as and for their Amended Answer to the
Complaint respectfully allege as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the
truth of any of the allegations set forth in the paragraphs designated "1", "2", "3", "4"
and "5" of the Amended Complaint except those conclusions of law which accordingly
require no response; and except admit that Plaintiff purports to proceed as stated therein.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “6”, “13”, “14”, “16”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “26”, “27”, “28” of the Amended Complaint.

THIRD: Deny the allegations set forth in paragraph “8” of the Amended Complaint; except those conclusions of law which accordingly require no response; and except admit that the City of Yonkers has a Police Department.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “9” of the Amended Complaint except admit that Detectives Anthony Chiarella, Sgt. Kevin Skully and Det. “John” McCabe are employed by the City of Yonkers in the City of Yonkers Police Department.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “10”, “11” and “12” of the Amended Complaint except those conclusions of law which accordingly require no response.

SIXTH: Deny the allegations set forth in paragraph “29” of the Amended Complaint except admit that Plaintiff was arrested and charged with robbery.

SEVENTH: Deny the allegations set forth in paragraph “30”, “31” and “33” of the Amended Complaint.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “34” and “35” of the

Amended Complaint except those conclusions of law which accordingly require no response.

ANSWERING THE FIRST CLAIM FOR RELIEF

NINTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “36” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TENTH: : Deny the allegations set forth in paragraphs “37”, “38”, “39”, “40” and “41” of the Amended Complaint; except those conclusions of law which accordingly require no response.

ANSWERING THE SECOND CLAIM FOR RELIEF

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraphs re-alleged in the paragraph designated “42” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWELFTH: Deny the allegations set forth in paragraphs “43” and “44” of the Amended Complaint; except those conclusions of law which accordingly require no response.

ANSWERING THE THIRD CLAIM FOR RELIEF

THIRTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraphs re-alleged in the paragraph designated “45” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "46" of the Amended Complaint; except those conclusions of law which accordingly require no response.

FIFTEENTH: Deny the allegations set forth in paragraphs "47" and "48" of the Amended Complaint; except those conclusions of law which accordingly require no response.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "49" of the Amended Complaint except those conclusions of law which accordingly require no response.

SEVENTEENTH: Deny the allegations set forth in paragraphs "50" and "51" of the Amended Complaint; except those conclusions of law which accordingly require no response.

EIGHTEENTH: Deny the allegations set forth in paragraph "52" of the Amended Complaint.

NINETEENTH: Deny the allegations set forth in paragraph "53" of the Amended Complaint; except those conclusions of law which accordingly require no response.

ANSWERING THE FOURTH CLAIM FOR RELIEF

TWENTIETH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraphs re-alleged in the paragraph designated "54" of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "55" of the Amended Complaint; except those conclusions of law which accordingly require no response.

TWENTY-SECOND: Deny the allegations set forth in paragraphs "56" and "57" of the Amended Complaint.

TWENTY-THIRD: Deny the allegations set forth in paragraph "58" of the Amended Complaint; except those conclusions of law which accordingly require no response.

ANSWERING THE FIFTH CLAIM FOR RELIEF

TWENTY-FOURTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraphs re-alleged in the paragraph designated "59" of the Amended Complaint with the same force and effect as though fully set forth herein at length.

THIRTIETH: Deny the allegations set forth in paragraphs "60", "61", "62", "63(a-g)", "65", "66", "67", "68", "69", "70", "71(A-E)" and "72" of the Complaint; (the Amended Complaint does not contain a paragraph numbered "64"), except those conclusions of law which accordingly require no response.

THIRTY-FIRST: Deny all allegations in the "Wherefore" portion of the Amended Complaint, except those conclusions of law which accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE:

THIRTY-SECOND: Defendants' actions were in good faith and for good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

AS AND FOR A SECOND DEFENSE:

THIRTY-THIRD: That the Plaintiff's arrest and prosecution were not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the Plaintiff was guilty of a criminal act and in arresting and prosecuting the Plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A THIRD DEFENSE:

THIRTY-FOURTH: At all times relevant to the Amended Complaint, Defendants have been in compliance with all requirements under the laws cited in the Complaint.

AS AND FOR A FOURTH DEFENSE:

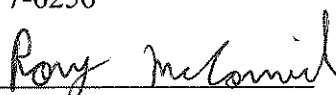
THIRTY-FIFTH: The individual defendants are entitled to qualified immunity.

WHEREFORE, Defendants request judgment dismissing the Amended Complaint together with costs, disbursements, and attorneys' fees and any other relief the Court deems just and proper.

Dated: June 16, 2008
Yonkers, New York

Yours, etc.,
FRANK J. RUBINO
Corporation Counsel
Attorney for Defendants
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6256

By:


Rory McCormick (RM 3994)
Associate Corporation Counsel

TO: Jon L. Norninsberg
225 Broadway, Suite 2700
New York, New York 10007

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2008 I caused a true and correct copy of the foregoing AMENDED COMPLAINT to be served by mail upon:

Jon L. Norminsberg
225 Broadway, Suite 2700
New York, New York 10007

Dated: June 17, 2008
Yonkers, New York


Rory McCormick